

Date of decision: 22-7-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S. K. KESHOTE, J
(22-7-1996)

Mr. Jitendra M. Patel for the petitioner
Mrs. K.A. Mehta for respondents No.1 to 3.

ORAL JUDGMENT:

The petitioner, ex-conductor of the Gujarat State Road Transport Corporation, filed this special civil

application challenging the order of the disciplinary authority and the orders of the first and second appellate authorities made in the matter of disciplinary proceedings initiated against him for the misconduct of not issuing tickets to the passengers after collecting the money from them. The learned counsel for the petitioner does not dispute that the order of dismissal has been made by the disciplinary authority after holding departmental inquiry. The first appellate authority and the second appellate authority dismissed the appeal of petitioner. Learned counsel for the petitioner made twofold submissions in the present case. Firstly it is contended that the statement of passengers which has been recorded by the checking party has not been furnished to the petitioner. It has next been contended that the penalty of dismissal from service imposed on the petitioner is highly disproportionate to the proved misconduct.

2. Both the contentions raised by the learned counsel for the petitioner are devoid of any substance. The petitioner has not raised the grievance of non-supply of statement of the passengers before both the appellate authorities. In case it was a matter of substance, as is sought to be projected by the learned counsel for the petitioner at this stage, the petitioner should have raised this point before the first appellate authority as well as before the second appellate authority. Leaving apart this question, I have examined the contention on the merits also. The counsel for the petitioner extensively read the inquiry report. I do not find that the inquiry officer had relied upon the so-called statement of the passengers. The petitioner could have legitimately claimed for copy of the statements of the witnesses on which the inquiry officer would have placed reliance to hold the petitioner guilty of the charges. It is not the case here and as such non-supply of the copy of statements of passengers has not caused any prejudice to the petitioner. The counsel for the petitioner contended that the petitioner has not been given opportunity to cross-examine the witnesses which has caused prejudice to him. This contention is also devoid of any merit. The question of cross-examination would have arisen only when those passengers would have been examined in the inquiry or their statements recorded by the inspecting party would have been relied upon. The only document which is the basis of the inquiry report for adjudging the petitioner's guilt is the document which has to be furnished and not any other document.

3. So far as the second contention is concerned, suffice it to say that the second appellate authority has gone on the question of quantum of punishment to be given to

the petitioner for the proved misconduct. The second appellate authority has declined to interfere with the punishment which has been given to the petitioner by the disciplinary authority, on the ground that earlier on sixteen occasions opportunities were given to the petitioner for improving his behaviour and conduct. In the matter of punishment to be awarded to a delinquent for proved misconduct this court has very limited power of judicial review. The Supreme Court in the case of B. C. Chatterji vs. Union of India, reported in JT 1995(8) SC 65 held that this court or the tribunal may go into the question of quantum of punishment to be given to a delinquent for proved misconduct only where it shocks the judicial conscience of the court. The petitioner was a conductor in the State Road Transport Corporation. The charge against him was that he had collected the fare but did not issue the tickets to passengers. It is a serious misconduct. On sixteen occasions in the past the petitioner was dealt with leniently, may for the reason of affording him opportunity to improve himself. Taking into consideration these facts, it cannot be said to be a case where the punishment of dismissal from service imposed on the petitioner for proved misconduct would shock the conscience of the court.

4. In the result the special civil application fails and the same is dismissed. Rule discharged. No order as to costs.